

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Schools and Libraries Universal Service Mechanism) CC Docket No. 02-6
)
Wireline Competition Bureau Seeks Comment on)
Revisions to FCC Forms 472, 473, and 474)

**REPLY COMMENTS OF
CTIA–THE WIRELESS ASSOCIATION®**

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I. INTRODUCTION AND SUMMARY

CTIA–The Wireless Association® (“CTIA”) supports efforts to improve accountability and eliminate waste, fraud, and abuse in all of the universal service programs, including the schools and libraries (“E-rate”) program. However, as commenters have pointed out in this proceeding, some of the Wireline Competition Bureau’s (“Bureau’s”) proposed revisions to FCC Forms 472, 473, and 474 will do nothing meaningful to increase accountability while substantially increasing burdens, and may undermine participation in the E-rate program.¹

The Commission should carefully consider the proposed form changes before they are implemented. Specifically, the Commission should not adopt the Public Notice’s proposal to require service providers to certify to *their E-rate customers’* compliance with the rules, which is impossible, or to rules that do not apply to them, which is inappropriate. In addition, the Commission should not needlessly increase the paperwork burdens of the forms where there is no corresponding benefit, such as by adding certifications to Form 474. Finally, the Commission should act on the two-year-old CTIA-USTelecom petition to resolve clarity regarding the lowest

¹ *Wireline Competition Bureau Seeks Comment on Revisions to FCC Forms 472, 473, and 474*, CC Docket No. 02-6, Public Notice, DA 13-363 (rel. March 8, 2013) (“Public Notice”).

corresponding price rule before seeking providers' certifications regarding compliance with the rule.

II. SERVICE PROVIDERS CANNOT CERTIFY TO THEIR E-RATE CUSTOMERS' RULE COMPLIANCE

The certifications in FCC Form 473 are a principal measure to ensure service providers' compliance with the program rules. The Commission understandably expects service providers to take these certifications seriously, and service providers sincerely do so. Precisely for this reason, the Commission must ensure that the certifications are appropriately tailored to issues within service providers' control. Unfortunately, in the case of some of the proposed changes to the forms attached to the Public Notice, certification of compliance would be difficult, if not impossible, for a scrupulous service provider to make. This overbroad approach undermines the very goals that the certifications are designed to achieve.

For example, the proposed Form 473 would require service providers to certify that *their E-rate customers* have complied with the rules. For example, new Item 13 on Form 473 would require service providers to certify to the accuracy of the Form 471, which was filed by the school or library.² As USTelecom points out, service providers generally have no way to verify that their E-rate customers have complied with the rules.³ Even if they could do so, the necessary steps would be exceedingly burdensome and invasive. As USTelecom points out, the certification requirements are not taken lightly, and service providers that are unable to make them simply may opt not to participate in the program, to the detriment of the program itself.⁴

² Public Notice, Draft Form 473 at 2, Item 13 ("I certify that the pre-discount costs of eligible services sought by any applicant on an FCC Form 471 are net of any rebates or discounts offered by this service provider.").

³ USTelecom comments at 6.

⁴ *Id.* at 11.

Alternatively, in order to make the certification, service providers would have to implement their own processes to obtain certifications from schools and libraries regarding the educators' compliance with program rules and, at maximum, service providers might have to perform audits of schools and libraries' compliance in order to provide the required certifications. There is no indication that the Bureau actually intends for service providers to engage in this sort of burdensome and invasive activity in order to comply with the new certification requirements.

Similarly, the draft Form 473 would require service providers to certify compliance with some rules that do not apply to them. For example, new Item 21 on Form 473 would require service providers to certify compliance with state and local competitive bidding requirements.⁵ Under the Commission's rules, however, this obligation falls on schools and libraries – not service providers.⁶ Here too, then, service providers might opt out of program participation to avoid a certification they are unable to make. Or, to participate, service providers would have to rely on secondary certifications from schools and libraries, or potentially even audits of schools and libraries, in order to certify that the rule was being followed. There is no reason to believe that the Bureau actually intends to undermine participation in the program, or create such a burdensome and circular process in order to support the required certifications.

To promote conscientious certifications by service providers, the Bureau should modify the proposed forms in order to eliminate any suggestion that service providers could be required

⁵ Public Notice, Draft Form 473 at 2, Item 21 (“I certify that this Service Provider is in compliance with state and local bidding requirements as required by the Commission’s rules at 47 C.F.R. § 54.503(b).”)

⁶ 47 C.F.R. § 54.503(b) (“*[A]n eligible school, library, or consortium ... shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.*”) (emphasis added).

to certify to their customers' compliance with any rule or requirement, or to certify compliance with any rule that does not apply to them.

III. THE COMMISSION SHOULD NOT NEEDLESSLY INCREASE PAPERWORK BURDENS ON E-RATE PARTICIPANTS

The Commission also should not adopt any proposals that would increase the paperwork burden of E-rate forms without a concomitant increase in accountability or protection for the E-rate program. Specifically, the Commission should not add duplicative service provider certifications to forms other than Form 473, and should not require forms to be certified by an officer.

The Public Notice proposes to add new certification language to Form 474, which service providers use to submit invoices for payment.⁷ The current version of the form does not require certifications.⁸ Adding certifications to Form 474 will undermine service providers' ability to submit forms and invoices electronically. As Sprint points out, most service providers currently file Form 474 in an electronic and encrypted format, which substantially streamlines filing.⁹ If the form had to be certified, providers may have to file more individual forms, and might have to file in paper rather than electronically.¹⁰ Critically, the proposed certifications on Form 474 are duplicative of Form 473, which is intended to consolidate service providers' certifications onto a single form.

The Commission also should reject the proposal to require an "officer" of the service provider to sign Form 473. Unlike the current Form 473, the proposed form would require the

⁷ Public Notice at 1-2, Draft Form 474 at 3.

⁸ *See generally* FCC Form 474 (April 2007).

⁹ Sprint comments at 1-2.

¹⁰ *Id.* *See also* USTelecom comments at 10.

certification to be signed by an “officer” of the service provider.¹¹ Although the Public Notice does not even mention this change in its summary of proposed changes, it is far from trivial. If the form must be certified by a corporate officer, the amount of internal review, and in some cases education, necessary to obtain the signature will be increased exponentially. Yet there is no evidence that the current practice – requiring certification by a company employee or official – has resulted in inaccurate certifications, or that officer certifications would be any more accurate. Indeed, because corporate officers may be farther removed from the day-to-day operation of companies’ provision of E-rate services, officers may be less qualified to provide accurate certifications. Thus, the proposal to require officer certifications would substantially increase the burden of the reporting requirement with no corresponding benefit.

For all these reasons, the Commission should reject the proposals to add certifications to Form 474 and require officer certification on Form 473.

IV. THE FCC SHOULD ACT ON THE CTIA-USTELECOM PETITION BEFORE SEEKING LOWEST CORRESPONDING PRICE CERTIFICATIONS

As CTIA and USTelecom formally brought to the Commission’s attention over three years ago, there is considerable confusion among E-rate participants and USAC regarding how the lowest corresponding price (“LCP”) rule is to be implemented in practice.¹² The Bureau now proposes to add to the annual E-rate certification form (FCC Form 473) a requirement that service providers certify their compliance with the LCP rule.¹³

¹¹ Public Notice, Draft Form 473 at 1, 3.

¹² *Petition of United States Telecom Association and CTIA—The Wireless Association® for Declaratory Ruling Clarifying Certain Aspects of the “Lowest Corresponding Price” Obligation of the Schools and Libraries Universal Service Program*, CC Docket No. 02-6, Petition for Declaratory Ruling (filed Mar. 19, 2010) (“LCP Petition”).

¹³ Public Notice, Draft Form 473 at 2, Item 20.

The record shows that significant uncertainty remains regarding the rule.¹⁴ For example, it is unclear whether or how the LCP rule can be applied outside the competitive bidding context, such as when schools or libraries purchase services out of state master contracts, in wireless retail stores, or out of published tariffs. It also is unclear how the LCP rule applies to bundles of services, including whether it applies to each element of a bundle or to comparable bundles. The LCP Petition and responsive comments raise other issues as well.¹⁵

As one commenter points out, given the current uncertainty, “service providers will be unable in many cases to determine whether they are ‘in compliance with and [have] taken reasonable steps to implement the lowest corresponding price rule.’”¹⁶ Thus, until the Commission clarifies the issues raised in the LCP Petition and the record it generated, the Commission should not require service providers to certify compliance with the LCP rule.

V. SUBSTANTIVE CHANGES TO THE FORMS REQUIRE A RULEMAKING

As USTelecom points out, the last time the Bureau sought to change Forms 472, 473, and 474, the Bureau employed rulemaking procedures consistent with the Administrative Procedure Act (“APA”).¹⁷ Here, however, the Bureau has sought comment only pursuant to the Paperwork Reduction Act (“PRA”), and has not acknowledged that the APA is implicated.¹⁸ To the extent

¹⁴ See, e.g., CSM Consulting comments at 4-5; Schultz Group comments at 2; USTelecom comments at 8.

¹⁵ See generally LCP Petition; see also comments responding to *WCB Seeks Comment on Petition of United States Telecom Association and CTIA-The Wireless Association for Declaratory Ruling Clarifying Certain Aspects of the "Lowest Corresponding Price" Requirement of the Schools and Libraries Universal Service Program*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 3662 (WCB 2010).

¹⁶ Schultz Group comments at 2.

¹⁷ USTelecom comments at 3-4.

¹⁸ Public Notice at 1.

that the proposed changes substantively alter service providers' obligations under the E-rate rules, USTelecom is correct that the Bureau is obligated to pursue a rulemaking, and the Public Notice's PRA-only approach would be procedurally defective.¹⁹

VI. CONCLUSION

CTIA strongly supports accountability in the E-rate program and improvements to Commission forms. However, some of the changes in the Public Notice would harm the program more than help it. To avoid creating barriers for scrupulous service providers to participate in E-rate, and to avoid increasing the burdens of the forms without corresponding benefits, the Commission should revise the proposed Form 472, 473, and 474 consistent with these comments.

Respectfully submitted,

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¹⁹ See also 47 C.F.R. § 0.291(e) (WCB lacks authority to issue notice of proposed rulemaking).